TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

NO. 169

POLAROID CORPORATION, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 23, 1960
CERTIORARI GRANTED OCTOBER 10, 1960

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

T. C. Docket No. 65983

POLAROID CORPORATION, Petitioner,

—vs.—

COMMISSIONER OF INTERNAL REVENUE, Respondent.

PETITION FOR REVIEW—Dated December 14, 1959

Now comes Polaroid Corporation, the petitioner above-named, by its attorney, Isaac M. Barnett, and petitions the United States Court of Appeals for the First Circuit to review the decision of the Tax Court of the United States rendered in the above cause on November 24, 1959, ordering and deciding that there are deficiencies in income and excess profits tax of $87,935.72, $220,260.07 and $261,682.44 for the calendar years 1951, 1952 and 1953, respectively.

Petitioner avers that the Tax Court erred (i) in deciding that petitioner's income during 1951, 1952 and 1953, arising from petitioner's discovery of the Polaroid Land process did not constitute abnormal income within the intendment of Section 456 of the Internal Revenue Code of 1939; (ii) in deciding that petitioner's income during 1951, 1952 and 1953, arising from petitioner's discovery of a synthetic stereo light polarizer did not constitute abnormal income within the intendment of Section 456 of the Internal Revenue Code of 1939; (iii) in deciding that in computing petitioner's net abnormal income for 1951 under Section 456(a)(3) of the Internal Revenue Code of 1939, the [fol. 2] interest charged on the normal and surtax deficiencies were deductible from the interest credited on the overassessment of excess profits tax resulting from the settlement of petitioner's Section 722 claim for the years 1942 and 1943; and (iv) in deciding that there were deficiencies

in excess profits tax for the years 1951, 1952 and 1953, and that there was not an overpayment of excess profits tax for 1951 entitling petitioner to a refund.

This petition for review is filed pursuant to the provisions of Section 7482 and 7483 of the Internal Revenue Code of 1954.

The facts determining venue pursuant to Section 7482(b) of the Internal Revenue Code of 1954, are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, with its principal office in Cambridge, Massachusetts. Petitioner filed an original return for 1951 with the Collector of Internal Revenue for the District of Massachusetts. Petitioner filed an amended return for 1951 and original returns for 1952 and 1953 with the Director of Internal Revenue, Boston, Massachusetts. The offices in which said respective returns were filed were within the jurisdiction of the Court of Appeals for the First Circuit.

Dated: December 14, 1959.

Isaac M. Barnett, Counsel for Petitioner, Office & P. O. Address, 60 West 42nd Street, New York 17, N. Y.

(Verified by Isaac M. Barnett December 14, 1959.)

[fol. 3]

BEFORE THE TAX COURT OF THE UNITED STATES

Docket No. 65983

POLAROID CORPORATION, Petitioner,

—vs.—

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Appearances:

For Petitioner: Isaac M. Barnett, Esq.

DOCKET ENTRIES

1957

Feb 25—Petition received and filed. Taxpayer notified. Fee Paid

Feb 27—Copy of petition served on General Counsel.

Feb 25—Request for Circuit hearing in Boston, Mass. filed by petr. Granted 3/6/57. Served 3/7/57.

April 9—Answer filed by Resp. Served 4/11/57.

1958

Oct 21—Notice of trial March 2, 1959, Boston.

[fol. 4]

1959

Mar 9-10—Trial at Boston by J. Opper. Filed at trial: Petr. trial memo; Stip. of Facts. Orig. briefs due May 11, 1959. Replies due June 10, 1959.

Mar 24—Transcript of proceedings of Mar 9-10, 1959. (2)

May 6—Brief filed by petr. S. 6/2/59.

May 8—Motion by resp. for extension of time to June 1, 1959 to file brief. Gr. 5/11/59. Served 5/12/59.

June 1—Brief filed by resp. S. 6/2/59.

June 25—Reply brief filed by petr. Served 7/8/59. (Advised resp. will not file).

Nov 23—Findings of Fact and Opinion filed. Judge Opper. Decision for resp. Served 11/23/59.

Nov 24—Decision entered. Judge Opper. Served 11/24/59.

[fol. 5]

BEFORE THE TAX COURT OF THE UNITED STATES

WASHINGTON

[Title omitted]

DECISION—Entered November 24, 1959.

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion, filed November 23, 1959, it is

Ordered and Decided: That there are deficiencies in income and excess profits tax of $87,935.72, $220,260.07 and $261,682.44 for the calendar years 1951, 1952 and 1953, respectively.

Enter:

Entered Nov. 24, 1959

Clarence V. Opper, Judge.

[fol. 6]

BEFORE THE TAX COURT OF THE UNITED STATES

33 T. C. No. 33

[Title omitted]

FINDINGS AND OPINION OF TAX COURT—November 23, 1959

1. Income from the sale of tangible property resulting from research and development, *held*, not abnormal within the meaning of section 456 (a) (2) (B), I.R.C. 1939.

2. Deductible interest on 1942 and 1943 income tax deficiencies which arose out of excess profits tax relief for same years, *held*, related to interest credited on excess profits tax refund within the meaning of section 456 (a) (3), I.R.C. 1939.

Isaac M. Barnett, Esq., for the petitioner.
James E. Markham, Jr., Esq., for the respondent.

Respondent determined deficiencies in petitioner's income and excess profits tax of $87,935.72, $220,260.07 and $261,682.44 for the years 1951, 1952 and 1953, respectively. He disallowed petitioner's claim for refund of income and excess profits tax of $193,908.85 for the year 1951.

The issues to be decided are (1) whether petitioner received abnormal income within the meaning of section 456, I.R.C. 1939, during any of the years in issue from the sales of either (a) stereo products, or (b) the Polaroid Land equipment, or both; and (2) whether interest credited to petitioner on a refund of excess profits tax for the years 1942 and 1943 must be reduced by interest charged on deficiencies in income tax for those same years under section 456 (a) (3), I.R.C. 1939, in computing petitioner's "net abnormal income" for 1951.

[fol. 7] FINDINGS OF FACT

The stipulated facts are found.

Petitioner is a Delaware corporation with its principal office in Cambridge, Massachusetts. It filed an original return for 1951 with the collector of internal revenue for the district of Massachusetts. It filed an amended return for 1951 and original returns for 1952 and 1953 with the director of internal revenue, Boston, Massachusetts.

Petitioner was incorporated in 1937 and from that date to late in 1948 it engaged primarily in the business of research and development and the exploitation of research and development by manufacturing and selling a variety of optical products in the field of light polarization, such as polarizing sunglasses and visors, polarizing camera filters, polarizing day-driving visors, and variable density windows.

In 1952 and 1953, 3-dimensional (3-D) motion pictures were exhibited. The audience viewed the picture through viewers incorporating the Polaroid synthetic light polarizer which were necessary to give the 3-D illusion. Edwin H. Land, petitioner's president and director of research, invented the synthetic polarizer used in these viewers. Petitioner owned three patents which covered this polarizer, hereafter referred to as stereo. The exhibition of the 3-D motion pictures would not have been commercially

practicable had petitioner's synthetic polarizer not been available. No noninfringing material for this purpose was on the market.

Petitioner's sales of stereo products during 1946 through 1950 were:

Year	Sales
1946	$25,141
1947	7,077
1948	55,867
1949	9,850
1950	15,385

[fol. 8] Its sales, expenses and net income from these sales in 1951, 1952 and 1953 were:

Year	Sales	Expenses	Net income
1951	$ 39,543	$ 21,726	$ 17,817
1952	85,443	82,558	2,885
1953	6,310,201	4,717,671	1,592,530

The expenses incurred by petitioner in the invention and development of its stereo products during 1943 through 1953 were:

Year	Expenses
1943	$ 60,695
1944	86,819
1945	172,640
1946	22,806
1947	9,040
1948	—
1949	—
1950	17,203
1951	22,773
1952	51,602
1953	143,953

Petitioner's income from the sales of stereo products during the years 1946 through 1953 was income from sales of tangible property arising out of research and development which extended over a period of more than 12 months.

On February 21, 1947, at a meeting of the Optical Society of America, Land first publicly announced and demonstrated his invention of a camera and photographic film which produced a finished dry positive print directly from the camera within 60 seconds after the picture was snapped. The camera and photographic film are known respectively as the Polaroid Land camera and Polaroid Land picture roll, and together they constitute the Polaroid Land equipment. The Optical Society program referred [fol. 9] to the equipment as "a new kind of photography as revolutionary as the transition from wet plates to daylight-loading film."

New basic principles of photographic processing were evolved by Land in his conception of the Polaroid Land equipment. There had never previously existed any photographic process in which a positive print was obtained simultaneously with the development of the negative by the application to the negative and positive receiving sheets of both the silver halide developer and the silver halide solvent. There had been no prior recognition of the possibility of simultaneously introducing the silver halide developer and the silver halide solvent and so controlling their intensities and speed of operation that the developer could perform its function in the presence of the solvent before the solvent could act upon the silver halide in the negative. The four separate steps in the prior art—the developing and fixing of the negative and the printing and fixing of the positive—were compressed in the Polaroid Land equipment into one step, the developing and fixing of the negative and contemporaneous formation on a positive sheet of a positive print from the dissolved silver halide of the negative. In the Polaroid Land picture roll all materials required for the developing and printing are part of the film assembly. The camera in which the film is processed remains dry throughout.

There were at least two major basic developments involved in the Polaroid Land equipment. One was a means by which high concentrations of developer and silver halide solvents were introduced simultaneously, after having been stored in a capsulating agent to keep them from oxidizing through contact with the air. The second was the process

of catalyzing the precipitation of silver from the silver halide solvent onto the surface of the positive receiving sheet in such a way as to obtain a silver image with relatively minute quantities of silver.

[fol. 10] Prior to the conception of the Polaroid Land equipment, no photographic equipment existed whereby the picture was taken, the negative developed, and a positive print obtained directly from the camera by a 1-step dry process. Land's new inventions in photographic equipment were novel.

Petitioner's first patent in its "Picture in a Minute" field issued in 1948, and at the end of 1953, 118 patents had issued and 91 additional applications were pending. At the end of 1958, 238 patents had issued and 202 additional applications were pending. In 1954, the United States Patent Office created a separate subclass to handle, exclusively, patent applications in the Polariod Land equipment field.

The Polaroid Land equipment was first marketed by petitioner in November 1948. The camera is not usable with any film other than the Polaroid Land picture roll and the picture roll is not usable with any camera other than the Polaroid Land camera. The photographic accessories marketed by petitioner, such as flash guns, light meters, filters and copy makers, have been specifically designed for the Polaroid Land camera and have had no market apart from their use with that camera. There have been no products on the market directly competitive with the Polaroid Land equipment since its introduction. In addition to its use in producing a picture in a minute, the Polaroid Land equipment is used to make instantaneous X-rays and in devices for the detection of the extent of exposure to radiation.

Petitioner's sales of Polaroid Land cameras, photographic packs, and photographic accessories during 1948 through 1950 were:

Year	Sales
1948	$ 39,155
1949	5,379,023
1950	5,057,908

[fol. 11] Its sales, expenses and net income from these sales in 1951, 1952 and 1953 were:

Year	Sales	Expenses	Net income
1951	$ 7,394,385	$ 6,164,973	$1,229,412
1952	11,076,969	9,611,657	1,465,312
1953	17,212,784	14,727,692	2,485,092

The expenses incurred by petitioner in the invention and development of Polaroid Land cameras, photographic packs, and photographic accessories during 1944 through 1953 were:

Year	Expenses
1944	$ 7,150
1945	96,943
1946	388,667
1947	300,369
1948	365,332
1949	267,425
1950	267,733
1951	143,986
1952	213,776
1953	243,936

No expenses were incurred by petitioner in the invention and development of Polaroid Land cameras, photographic packs or photographic accessories prior to 1944.

The sales of the Polaroid Land equipment during the years 1948 through 1953 resulted entirely from its capacity to produce a picture in a minute. If this equipment had not made an instantaneous positive print there would have been no demand for the camera or photographic pack during that period.

Petitioner's income from the sales of the Polaroid Land equipment and photographic accessories during 1948 through 1953 was income from the sales of tangible property arising out of research and development which extended over a period of more than 12 months.

The income received by petitioner in 1951, 1952 and 1953 from the sales of stereo products and the Polaroid [fol. 12] Land equipment and accessories does not constitute abnormal income under section 456.

In 1951, petitioner's claims for relief under section 722, I.R.C. 1939, for the years 1942 and 1943 were settled, and as a result, interest of $74,864.93 on the overassessments was computed to June 13, 1951. As a further result of this settlement on the same claims, interest on deficiencies in income tax for those years of $34,075.11 was computed to June 13, 1951. The interest charged on the deficiencies in income tax for the years 1942 and 1943 in the amount of $34,075.11 is a deduction relating to the interest of $74,864.93.

OPINION.

OPPER, *Judge:* The issues in this case are essentially questions of statutory construction. Respondent does not dispute the facts produced by petitioner.

The income[1] which petitioner contends is abnormal under section 456, I.R.C. 1939,[2] was earned by the sale of

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[1] The parties have drawn no distinction between the income earned from the sales of the Polaroid Land equipment and that earned from the sales of the stereo products. Accordingly, we treat them as being similar in nature for purposes of this issue.

[2] SEC. 456. ABNORMALITIES IN INCOME IN TAXABLE PERIOD.

(a) Definitions.—For the purposes of this section—

(1) Abnormal Income.—The term "abnormal income" means income of any class described in paragraph (2) includible in the gross income of the taxpayer for any taxable year under this subchapter if * * * the taxpayer normally derives income of such class but the amount of such income of such class includible in the gross income of the taxable year is in excess of 115 per centum of the average amount of the gross income of the same class for the four previous taxable years * * *.

(2) Separate Classes of Income.—Each of the following subparagraphs shall be held to describe a separate class of income:

(A) Income arising out of a claim, award, judgment, or decree, or interest on any of the foregoing; or

(B) Income resulting from exploration, discovery, or prospecting, or any combination of the foregoing, extending over a period of more than 12 months; or

(C) Income from the sale of patents, formulae, or processes, or any combination of the foregoing, developed over a period of more than 12 months; or

[fol. 13] tangible property which arose out of research and development[3] extending over a period of more than 12 months. Respondent's regulations[4] provide that such income is not abnormal and may not constitute a class of income under section 456. This provision in respondent's regulations is squarely in accord with congressional intent as manifested by the legislative history of section 456.

Basically, the Korean War excess profits tax was patterned after the World War II excess profits tax. There was, however, a general attempt to simplify the adminis-[fol. 14] tration of the tax and to eliminate potential inequities. The World War II tax described one class of abnormal income as follows:

(D) Income includible in gross income for the taxable year rather than for a different taxable year by reason of a change in the taxpayer's method of accounting.

All the income which is classifiable in more than one of such subparagraphs shall be classified under the one which the taxpayer irrevocably elects. The classification of income of any class not described in subparagraphs (A) to (D), inclusive, shall be subject to regulations prescribed by the Secretary.

[3] Petitioner cannot and does not deny this, but insists that the "tangible" properties would have been valueless except for the process they embodied. This seems to us irrelevant.

[4] Regulations 130. Sec. 40.456-2. [As amended by T.D. 6026, 1953-2 C.B. 235, 236] Classification of income. • • •

(b) Other income, not within a class described in subparagraphs (A)-(D) of section 456 (a) (2), to which section 456 is applicable may be grouped by the taxpayer, subject to approval by the Commissioner on the examination of the taxpayer's return, in such classes similar to those specified in subparagraphs (A)-(D) of section 456 (a) (2) as are reasonable in a business of the type which the taxpayer conducts, and as are appropriate in the light of the taxpayer's business experience and accounting practice. Income from the sale of tangible property arising out of research and development which extended over a period of more than 12 months is not included in the list of abnormal types of income to which section 456 is applicable, and such income may not constitute a class of income for purposes of that section. However, section 456 is applicable to such income if the income is otherwise property includible within a class of income to which such section is applicable, for example, the class described in section 456 (a) (2) (D).

SEC. 721 [I.R.C. 1939]. ABNORMALITIES IN INCOME IN TAXABLE PERIOD.

(a) Definitions.—For the purposes of this section—

* * * * * * *

(2) Separate Classes of Income.—Each of the following subparagraphs shall be held to describe a separate class of income:

* * * * * * *

(C) Income resulting from exploration, discovery, prospecting, research, or development of tangible property, patents, formulae, or processes, or any combination of the foregoing, extending over a period of more than 12 months; or

Congress reported with regard to the Korean War (Section 456) counterpart of this class of abnormal income:

> The equivalent provision in the World War II law (sec. 721) also permitted adjustments with reference to certain other types of income, particularly that *resulting from the sale of tangible property arising out of research and development which extended over a period of more than 12 months.* This provision in the old law was a potential loophole of major dimensions. Because there appeared to be no means of restricting such an adjustment to truly meritorious cases other than by the introduction of a large degree of administrative discretion of the type required by the general relief clause of the World War II law (sec. 722), and be- [fol. 15] cause the need for a reallocation of such income seemed to be materially less than in the other classes of income described above, *this item has been omitted from the list of abnormal types of income* for which a reallocation can be made under this bill. [H. Rept. No. 3142, 81st Cong., 2d Sess. (1950), p. 13. Emphasis added.]

Petitioner contends that its income is "otherwise properly includible within a class of income to which * * * [section 456, I. R. C. 1939] is applicable" and therefore qualifies under the exception contained in the regulation. It contends that the income resulted from a "discovery" within the meaning of section 456 (a) (2) (B), and that although the term "discovery" as used in that section may not encompass all inventions it does include new basic inventions of "revolutionary proportions" such as the Polaroid Land equipment and the stereo products. For purposes of this case we assume that petitioner's inventions may have been new, startling or even revolutionary.

But Congress intentionally excluded income from the sale of property resulting from research, whether or not constituting invention, as a potential class of abnormal income when it enacted section 456, and it did so regardless of the dynamic effect of an invention. Although the meanings of the terms "discovery" and "invention" may overlap in the field of patent law, see 35 U. S. C. 100, we do not read the section before us as indicating that Congress intended the term "discovery" to include what is normally thought of as patentable inventions.[5] Cf. section [fol. 16] 456 (a) (2) (C), *supra* at footnote 2. Respondent's suggestion that "discovery" was used to refer to the gas, oil and mining industries has some merit inasmuch as it is interposed between "exploration" and "prospecting" which

[5] "Webster's New Collegiate Dictionary defines 'exploration' as '[a]ct of exploring, as for geographical discovery,' and in discussing the word 'discover' the same work says: 'Discover presupposes exploration * * *.' It also defines 'discovery' as '1. Act of discovering,' and the verb 'prospect' as '[t]o explore or examine for something.' We consider that Congress in using the words 'exploration, discovery, or prospecting' meant acts leading up to and antedating the finding of the thing discovered, which in this case, according to the hypothesis made by both parties, was the oil pool here in question. A factor leading us to this conclusion is the deliberate omission by Congress in enacting section 456 (a) (2) (B) of the word 'development,' which had appeared in the predecessor statute. We consider that Congress did not mean the words 'exploration, discovery, or prospecting' to include acts seeking information about the thing already discovered, performed as incidents to its development and exploitation after it was discovered." (*Big Four Oil & Gas Co.*, 29 T. C. 31, 41.)

are normally thought of in connection with those industries. This, however, is a question we need not decide. The narrower interpretation of section 456 is necessary if we are to give effect to the action taken by Congress in changing the language of the predecessor of that very section to exclude income resulting "from the sale of tangible property arising out of research and development which extended over a period of more than 12 months." *Searle & Co.* v. *Jarecki* (N.D. Ill.) F. Supp.

Petitioner further contends that although its income may not fall within one of the classes enumerated in section 456, it is entitled under respondent's regulations[6] to group this income in such classes "as are reasonable in a business of the type which * * * [it] conducts, and as are appropriate in the light of * * * [its] business experience and accounting practice." Although this regulation provides that such a grouping is subject to respondent's approval, petitioner contends that the provision in section 456(a)(2) that "the classification of income of any class not described * * * shall be subject to regulations prescribed by the Secretary" was intended to broaden the classes and that the respondent has no right to refuse approval to petitioner's classification. That section does not require respondent to classify [fol. 17] all income. He did not approve of petitioner's classification and, furthermore, his regulation specifically excludes the type of income in question with an exception which we have found not applicable to petitioner. Petitioner's income earned in 1951, 1952 and 1953, was not abnormal within the meaning of section 456.

The second issue is whether the interest with which petitioner was credited in 1951 upon its successful claim for an excess profits tax refund, and which was admittedly abnormal income, must be reduced in computing petitioner's net abnormal income under section 456 (a) (3)[7] by the inter-

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[6] See footnote 4, *supra*.

[7] SEC. 456. ABNORMALITIES IN INCOME IN TAXABLE PERIOD.

(a) Definitions.—For the purpose of this section—

* * * * *

(3) Net Abnormal Income.—The term "net abnormal income" means the amount of the abnormal income less, under

est which it was charged on income tax deficiencies which were attributable to the reduced excess profits tax. In the words of the statute, the question is whether the interest on the income tax deficiency is a cost or deduction "relating" to the interest on the excess profits tax refund.

Although the corporate income tax and the excess profits tax are separate and distinct types of taxes, *Babcock & Wilcox Co.* v. *Pedrick* (C.A. 2), 212 F. 2d 645, certiorari denied 348 U. S. 936, they are related in some aspects. The net dollar return to petitioner from its excess profits tax refund claim was reduced by a corresponding income tax deficiency, because as petitioner was successfully able to reduce its adjusted excess profits net income its normal tax [fol. 18] net income increased. Section 26 (e), I.R.C. 1939, applicable to the relevant years 1942 and 1943. There was, at least to that extent, a relationship between the World War II excess profits tax and the income tax.

It is not necessary to say that income tax and excess profits tax are not different taxes in order to say that they are "related." Computation of one is reciprocal to that of the other, and it is this arithmatic relationship which led automatically and inevitably to the deficiency in income tax upon reduction of and determination of overassessment in the excess profits tax. *Morrisdale Coal Mining Co.*, 21 T.C. 393; *Ambassador Hotel Co. of Los Angeles*, 32 T.C. 208.

Interest on the one was due to the petitioner by reason of the same fact that caused interest on the other to be due from petitioner, namely, allowance of petitioner's claim under section 722. We think it would hence be totally illogical to say that the two payments are not "related." And that the interest payable by petitioner was a "deduction" cannot be questioned. Section 23 (b), I.R.C.

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regulations prescribed by the Secretary, • • • (B) an amount which bears the same ratio to the amount of any costs or deductions relating to such abnormal income, allowable in determining the normal-tax net income for the taxable year, as the excess of the amount of such abnormal income over 115 per centum of such average amount bears to the amount of such abnormal income.

1939. It need not also be a "cost." We conclude that respondent did not err on either ground urged.

Reviewed by the Court.

Decision will be entered for the respondent.

[fol. 19]

BEFORE THE TAX COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR REVIEW OF DEFICIENCY DETERMINATION AND OF DISALLOWANCE OF REFUND CLAIM—February 25, 1957

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols ARC-Ap:BOS:EM) dated January 22, 1957, and for a review of the disallowance of petitioner's claim for refund for excess profits tax illegally, erroneously or excessively collected for the calendar year 1951, and as a basis for its petition alleges as follows:

1. Petitioner is a Delaware corporation with its principal office at 730 Main Street, Cambridge, Massachusetts. The returns for the periods here involved were filed with the District Director of Internal Revenue, Boston Division, Boston, Massachusetts.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to petitioner on January 22, 1957. The notice of disallowance of petitioner's claim for refund for the calendar year 1951 is contained in said notice of deficiency.

[fol. 20] 3. Petitioner's claim for refund for the calendar year 1951 (a copy of which is attached and marked Exhibit B) was filed with the District Director of Internal Revenue, Boston Division, Boston, Massachusetts, on or about October 1, 1953, within the period provided by the Internal Revenue Code for the filing of such refund claim. Such refund claim is based on excess profits tax abnormalities under Section 456 of the 1939 Internal Revenue Code. The

overpayment of tax for which the refund claim was filed was paid within the period applicable under Section 6512 and Section 6511(b)(2) of the Internal Revenue Code.

4. The deficiencies as determined by the Commissioner are in excess profits taxes for the calendar years 1951, 1952 and 1953, in the aggregate amount of $569,878.23, all of which is in dispute, and are itemized as follows:

1951	$ 87,935.72
1952	220,260.07
1953	261,682.44

Said notice of deficiency further states that the issue raised in petitioner's claim for refund for the calendar year 1951 should be made a part of this petition. The amount of petitioner's said claim for refund is $193,908.85, all of which is also in dispute.

5. The determination of tax set forth in said notice of deficiency and the disallowance of petitioner's aforesaid claim for refund are based upon the following errors:

(a) In computing the net abnormal income of petitioner for the purpose of computing the excess profits tax liability of petitioner for the year 1951 under Section 456 of the 1939 Internal Revenue Code, the Commissioner erroneously held that the interest credited on the overassessments of excess profits tax arising out of petitioner's claims for relief under Section [fol. 21] 722 of the 1939 Internal Revenue Code for the years 1942 and 1943 in the sum of $74,864.93 should be reduced by the interest charged on the related deficiencies in income tax for said years in the sum of $34,075.11, whereas the entire amount credited as interest on the overassessments of excess profits tax constituted abnormal income under Section 456 of the 1939 Internal Revenue Code.

(b) In determining the excess profits tax liability of petitioner for the years 1951, 1952 and 1953, respectively, the Commissioner erroneously held that petitioner's income for such years, respectively, arising from its discovery of the Polaroid Land camera and

photographic pack, did not constitute abnormal income under Section 456 of the 1939 Internal Revenue Code, whereas such income did constitute abnormal income within the intendment of such section.

(c) In determining the excess profits tax liability of petitioner for the years 1951, 1952 and 1953, respectively, the Commissioner erroneously held that petitioner's income for such years, respectively, arising from its discovery of devices and techniques used in connection with the exhibition of 3-dimensional motion pictures did not constitute abnormal income under Section 456 of the 1939 Internal Revenue Code, whereas such income did constitute abnormal income within the intendment of such section.

6. The facts upon which petitioner relies as the basis of this proceeding are as follows:

(a) The interest credited to petitioner on the overassessments of excess profits tax arising out of the settlement in the year 1951 of petitioner's claim for relief under Section 722 of the 1939 Internal Revenue Code for the years 1942 and 1943 was in the aggregate sum of $74,864.93.

[fol. 22] (b) The interest charged against petitioner on the related deficiencies in income tax arising out of the settlement in the year 1951 of petitioner's claim for relief under Section 722 of the 1939 Internal Revenue Code for the years 1942 and 1943 was in the aggregate sum of $34,075.11.

(c) The entire amount of interest credited to petitioner on the aforesaid overassessments of excess profits tax constituted abnormal income within the intendment of Section 456 of the 1939 Internal Revenue Code.

(d) From the date of its incorporation in 1937 to late in 1948, petitioner was engaged primarily in the business of manufacturing and selling a variety of optical products in the field of light polarization, such

as polarizing sunglasses and visors, polarizing camera filters, polarizing day driving visors, and variable density windows.

(e) In the latter part of 1948, petitioner, after devoting many years to its invention, placed on the market an entirely new type of camera, known as the Polaroid Land camera, which produces finished photographs in one minute.

(f) The camera and the photographic pack required for its use were revolutionary inventions in that never before in the entire history of photography had a portable camera been created which enabled the user to take and produce a finished positive picture within a period of sixty seconds. The inventions were acknowledged by the scientific world as a unique discovery in the photographic field.

(g) The invention of the Polaroid Land camera and photographic pack changed the character of taxpayer's business. Since their advent, taxpayer's major operations have been primarily in the photographic field.

(h) This camera and photographic pack created a source of income theretofore never experienced by peti- [fol. 23] tioner or by any other taxpayer. Such income was directly attributable to the prior years in which the discovery and invention of these unique products were carried on by petitioner.

(i) The respective amounts of petitioner's net income during the years 1951, 1952 and 1953, respectively, resulting from the invention and discovery of the Polaroid Land camera and photographic pack were as follows:

1951	$1,231,106
1952	1,452,759
1953	2,480,542

(j) The said respective amounts of petitioner's net income during the years 1951, 1952 and 1953, respectively, resulting from the invention and discovery of

the Polaroid Land camera and photographic pack constituted income resulting from discovery in a business of the type conducted by petitioner and was abnormal income within the intendment of Section 456 of the 1939 Internal Revenue Code.

(k) Petitioner, after devoting many years to their invention, discovered devices and techniques for use in connection with exhibition of 3-dimensional motion pictures.

(l) Such devices and techniques of petitioner made possible the exhibition of 3-dimensional motion pictures.

(m) Such devices and techniques created a source of income theretofore never experienced by petitioner or by any other taxpayer. Such income was directly attributable to the prior years in which the discovery and invention of these unique products occurred.

(n) The respective amounts of petitioner's net income for the calendar years 1951, 1952 and 1953, respectively, resulting from its invention and discovery of such devices and techniques for the exhibition [fol. 24] of 3-dimensional motion pictures were as follows:

1951	$ 17,817.00
1952	2,885.00
1953	1,587,580.00

(o) The said respective amounts of petitioner's income during the years 1951, 1952 and 1953, respectively, resulting from the invention and discovery of devices and techniques for the exhibition of 3-dimensional motion pictures constituted income from discovery in a business of the type conducted by petitioner, and was abnormal income within the intendment of Section 456 of the 1939 Internal Revenue Code.

7. The net income of petitioner arising out of the discovery of the Polaroid Land camera and photographic pack and of the devices for the exhibition of 3-D motion pictures, subject to excess profits tax for the years 1951,

1952 and 1953, respectively, was $754,570, $982,260 and $1,865,640, respectively, as more particularly appears in the computation set forth in Exhibit C attached hereto and made part hereof.

Wherefore, petitioner prays that this Court may hear the proceeding, determine that there is no deficiency due from petitioner for the years 1951, 1952 and 1953, and allow petitioner's claim for refund for the year 1951.

Isaac M. Barnett, Counsel for Petitioner, 60 East 42nd Street, New York 17, N. Y.

Of Counsel, Silver, Saperstein & Barnett, 60 East 42nd Street, New York 17, N. Y.

(Verified by Carlton P. Fuller, February 15, 1957.)

[fol. 25] EXHIBIT A TO PETITION

55 Tremont Street—Room 920-A

ARC-Ap:BOS
KM

APPELLATE DIVISION

REGISTERED MAIL

Jan 22 1957
Massachusetts

Polaroid Corporation
730 Main Street
Cambridge 39, Massachusetts

Gentlemen:

You are advised that the determination of your income and excess profits tax liability for the taxable years ended December 31, 1951, December 31, 1952 and December 31, 1953 discloses deficiencies in tax aggregating $569,878.23 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, WASHINGTON 4, D. C., for a redetermination of the deficiencies. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

[fol. 26] Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to this office. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

Russell C. Harrington
Commissioner,
By (signed) J. E. MAHONEY
Associate Chief—Appellate

Enclosures:

Statement
Form 1276
Agreement Form

KMurphy/mb
1/15/57

[fol. 27] ARC-Ap:BOS
KM

STATEMENT

POLAROID CORPORATION
730 Main Street
Cambridge 39, Massachusetts

Tax Liability for Taxable Years Ended December 31, 1951, December 31, 1952 and December 31, 1953

INCOME TAX

Year	Liability	Assessed	Deficiency
1951	$ 997,377.71	$ 909,441.99	$ 87,935.72
1952	1,192,675.46	972,415.39	220,260.07
1953	3,291,023.24	3,029,340.80	261,682.44
Totals	$5,481,076.41	$4,911,198.18	$569,878.23

In making this determination of your income tax liability, careful consideration has been given to the reports of examination dated June 30, 1954 and January 24, 1956, to your protests dated December 13, 1954 and March 30, 1956 and to the statements made at the conference held on March 6, 1956.

"It is determined that in the computation of the amount of net abnormal income for the purpose of computing the excess profits tax under Section 456 of the 1939 Internal Revenue Code for the year 1951, the interest credited on the overassessments of excess profits tax arising out of your claims for relief under Section 722 of the Internal Revenue Code of 1939 for the years 1942 and 1943 of $74,-864.93 should be reduced by the interest charged on the related deficiencies in income tax for said years of $34,-075.11.

"It is determined that the income received by you from the Polaroid Land Camera and Photographic Pack and from your invention of devices and techniques used in the [fol. 28] exhibition of 3-dimensional motion pictures does not constitute abnormal income under Section 456 of the Internal Revenue Code of 1939 in the years 1951, 1952 and 1953.

"If petition is filed with The Tax Court of the United States against the determination of the Commissioner, the issue raised in your claim for refund for the year 1951 should be made a part of the petition filed with the Court. If a petition is not filed, a statutory notice of disallowance will be forwarded to you in accordance with the provisions of Section 3772(a)(2) of the Internal Revenue Code of 1939."

A copy of this letter and statement has been mailed to your representative, Mr. Isaac M. Barnett, et al c/o Silver, Saperstein & Barnett, 60 East 42nd Street, New York 17, New York, in accordance with the authority contained in the power of attorney executed by you.

Year: 1951

SCHEDULE 1

Adjustments to Net Income

Net Income as disclosed by return		$1,421,431
Unallowable deductions and additional income:		
(a) Massachusetts excise tax	$ 2,265.24	
(b) Administrative expense	2,515.28	
(c) Legal expense	557.65	
(d) Repairs	22,000.01	
(e) Depreciation	41,805.67	
(f) Patent department expense	23,905.20	
(g) Interest Income	40,789.82	133,838
Total		$1,555,270
Nontaxable income and additional deductions:		
(h) Amortization of patents	4,937.21	
(i) Loss on equipment abandoned	5,175.15	10,112
Net income adjusted		$1,545,158

[fol. 29]

SCHEDULE 1-A

Explanation of Adjustments

(a) Massachusetts excise tax		2,265.24
Amount claimed	$110,666.47	
Amount allowable	108,401.23	
Adjustment	$ 2,265.24	
The deduction for Massachusetts excise tax was overstated in your return.		
(b) Administrative expense		2,515.28
Amount of $2,515.28 paid on an additional Massachusetts tax for a prior year is not an allowable deduction for the current year.		
(c) Legal expense		557.65
Legal expense of $557.65 in connection with the purchase of land is a capital expenditure.		
(d) Repairs		22,000.01
Items totalling $22,000.01, charged to repairs, represent capital expenditure. Depreciation has been allowed in (e) below.		
(e) Depreciation		41,805.67
Deduction for depreciation has been decreased by $41,805.67, as follows:		
Depreciation claimed on return on accounts adjusted	$123,265.22	
Depreciation allowable	81,459.55	
Adjustment	$ 41,805.67	
(f) Patent department expense		23,905.20
The deduction claimed on your return for patent department expense has been decreased by $23,905.20, the amount considered a capital expenditure in connection with the prosecution of new patents. Amortization has been allowed in (h) below.		
(g) Interest Income		40,789.82

[fol. 30] Your income is increased by interest income accrued as of December 31, 1951 on excess profits tax overassessments less interest due to June 13, 1951 on normal and surtax deficiencies for the years 1942 through 1945, as follows:

Interest income	$ 74,864.93
Interest expense	34,075.11
Net, as above	$ 40,789.82

(h) Amortization of patents 4,937.21

Amortization is allowed in connection with patent expense capitalized in prior year examinations and in (f) above, as follows:

Year	Amount	Estimated Life	Amortization Allowable	
1948	$27,047.62	17 years	$1,591.04	
1949	23,665.02		1,392.06	
1950	21,267.40		1,251.02	
1951	23,905.20		703.09	(½ year)
Total			$4,937.21	

(i) Loss on equipment abandoned 5,175.15

Due to depreciation adjustments, the loss on equipment abandoned has been adjusted as follows:

Loss claimed	$ 127.45
Loss as adjusted	5,302.60
Adjustment, as above	$ 5,175.15

The detail is as follows:

Dept.	Assets	Reserve Per Return	Per Return Loss on Sale or Abandonment	Reserve as Corrected	Loss as Corrected
A-52	$ 235.00	$ 132.18	$102.82	$ 133.91	$ 101.09
A-73	1,854.94	1,854.94	none	1,082.04	772.90
A-72	25,910.74	25,910.74	none	25,771.92	138.82
A-70	2,932.81	2,908.18	24.63	1,644.11	1,288.70
A-74	4,365.21	4,365.21	none	1,364.12	3,001.09
	Totals		127.45		5,301.60

[fol. 31]

Schedule 2

Computation of Tax

Net income adjusted	$1,545,158.16
Combined normal tax and surtax (50¾ of $1,545,158.16 less $5,500.00)	778,667.77
Alternative tax (Schedule 3)	778,324.16
Excess profits tax (Schedule 5)	219,053.55
Income and excess profits tax liability	997,377.71
Tax assessed, Account No. 4180242	909,441.99
Deficiency of income and excess profits tax	87,935.72

Schedule 3

Alternative Tax

Net income adjusted	1,545,158.16
Less: Excess of net long-term capital gain over net short-term capital loss	1,334.37
Ordinary net income	1,543,823.79
Partial tax (50¾% of $1,543,823.79 less $5,500.00)	777,990.57
Tax on capital gain (25% of $1,334.37)	333.59
Alternative tax	778,324.16

Schedule 4

Excess Profits Net Income

Excess profits net income as disclosed by return	1,420,097.28
Additions:	
Net adjustment to net income (Schedule 1)	123,726.51
	1,543,823.79
Deductions:	
Net abnormal income*	35,440.13
Excess profits net income adjusted	1,508,383.66

*Net abnormal income for 1951 attributable to prior years is computed as follows:

Net interest credited (Exhibit A)	$43,119.92
Less: Amount attributable to 1952	2,330.10
Amount attributable to 1951 and prior year	40,789.82
Net amount attributable to 1951 ($8,015.45 less $2,665.76)	5,349.69
Amount attributable to prior years	35,440.13

[fol. 32]

Schedule 5

Computation of Excess Profits Tax Under Section 456, I. R. Code of 1939

Excess profits net income less abnormal income attributable to prior years		$1,508,383.6
Excess profits credit		778,205.1
Adjusted excess profits net income		730,178.5
Tax at 30%		219,053.5
Excess profits taxes for prior years due to inclusion of net abnormal income from 1951.		
1950 (No adjusted excess profits net income)	none	
1946 through 1949	none	
1945 (No adjusted excess profits net income)	none	
1944 (No adjusted excess profits net income)	none	none
Total excess profits tax		$ 219,053.5

Year: 19

Schedule 6

Adjustments to Net Income

Net income as disclosed by return		1,815,246.9
Unallowable deductions and additional income:		
(a) Capital items		17,914.8
Total		$1,833,161.7
Nontaxable income and additional deductions:		
(b) Massachusetts excise tax	$ 3,712.41	
(c) Interest on tax refund	40,789.82	
(d) Depreciation	7,634.60	
(e) Depreciation	2,112.95	54,249.7
Net income adjusted		$1,778,911.9

[fol. 33]

SCHEDULE 6-A

Explanation of Adjustments

(a) Capital items 17,914.81

The following items charged to expense are determined to be capital expenditures:

Date	Item	Amount
8/27/52	Office partition	$ 1,050.00
11/20/52	Office partition	750.00
12/31/52	Chain fence	860.00
6/29/52	Frame Hood	1,219.81
2/20/52	Mixing tanks	680.00
11/12/52	Engineering & Design Negative Developing Machine	13,355.00
		$17,914.81

Depreciation has been allowed in (e) below.

(b) Massachusetts excise tax 3,712.41

Additional deduction for Massachusetts excise tax is allowable, as follows:

Claimed on return	$137,801.46
Allowable	141,513.87
Adjustment	3,712.41

(c) Interest on tax refund 40,789.82

Interest of $40,784.82 reported on return is eliminated from income, having been determined to be taxable in the prior taxable year.

(d) Depreciation 7,634.60

Depreciation is allowed as follows:

Kind of Property	Cost	Depreciation
Leasehold-Cambridge Rubber	$ 4,540.07	$1,702.48
Leasehold Kaplan-Crown Cork	6,012.85	2,327.54
Leasehold Kaplan-Crown Cork	8,907.05	3,143.66
Leasehold Main Street	1,829.61	372.12
Roll Film-Assembly Equipment	710.43	88.80
Total	$22,000.01	$7,634.60

(e) Depreciation $2,112.95

Depreciation is allowed for one-half year in connection with items capitalized in (a) above.

[fol. 34]

SCHEDULE 7

Computation of Tax

Net income adjusted	$1,778,911.
Combined normal tax and surtax (52% of $1,778,911.93 less $5,500.00)	919,534.
Alternative tax (Schedule 8)	917,839.
Excess profits tax (Schedule 10)	274,835.
Income and excess profits tax liability	$1,192,675.
Tax assessed, Account No. 4181802	972,415.
Deficiency of income and excess profits tax	$ 220,260.

SCHEDULE 8

Alternative Tax

Net income adjusted	$1,778,911.
Less: Excess of net long-term capital gain over net short-term capital loss	6,517.
Ordinary net income	1,772,394.
Partial tax (52% of $1,772,394.07 less $5,500.00)	916,144.
Tax on capital gain (26% of $6,517.86)	1,694.
Alternative tax	$ 917,839.

SCHEDULE 9

Excess Profits Net Income

Excess profits net income as disclosed by return	$1,808,729.
Less: Net adjustment to net income (Schedule 6)	36,334.
Excess profits net income adjusted	$1,772,394.

[fol. 35]

Schedule 10

Computation of Excess Profits Tax

Excess profits net income adjusted	$1,772,394.07
Excess profits credit	856,274.39
Adjusted excess profits net income	916,119.68
30% of $916,119.68	274,835.90
18% of $1,772,394.97	319,030.93
Excess profits tax	274,835.90

Year: 1953

Schedule 11

Adjustments to Net Income

Net income as disclosed by return		$4,693,713.00
Unallowable deductions and additional income:		
(a) Massachusetts excise tax	$ 4,234.93	
(b) Capital items	27,655.55	31,890.48
Total		$4,725,603.48
Nontaxable income and additional deductions:		
(c) Depreciation	7,634.60	
(d) Depreciation	4,225.90	
(e) Depreciation	3,373.94	15,234.44
Net income adjusted		$4,710,369.04

Schedule 11-A

Explanation of Adjustments

(a) Massachusetts excise tax		4,234.93
The deduction for Massachusetts excise tax has been reduced, as follows:		
Claimed on return	354,145.45	
Allowable	349,910.52	
Adjustment	4,234.93	
(b) Capital items		27,655.55

[fol. 36] The following items charged to expense are determined to be capital expenditures:

Date	Item	Amou
9/20/53	Film reader	350.
9/28/53	Calculator	551.
8/27/53	Model V-35-2 Electric oven	1,194.
8/27/53	Temperature Controller	239.
5/12/53	Spectrophoto Meter	3,458.
3/ 5/53	Heating Equipment	1,517.
1/14/53	Lighting Fixtures	1,329.
1/30/53	Acoustic Ceiling	1,753.
2/26/53	Ceiling File	990.
2/27/53	Electrical Install	1,960.
7/31/53	Blower, Duct & Fittings	688.
1/22/53	Lighting Fixtures	223.
1953	Engineering & Design X-ray Equipment	7,900.
1953	Engineering & Design Steno machine	5,500.
	Total	27,655.

Depreciation has been allowed in (e) below:

(c)	Depreciation See Schedule 6-A(d)	$ 7,634.
(d)	Depreciation Depreciation of $4,225.90 has been allowed on items capitalized in 1952	4,225.
(e)	Depreciation Depreciation of $3,373.94 has been allowed on items capitalized in (b) above.	3,373.

Schedule 12

Computation of Tax

Net income adjusted	$4,710,369.
Combined normal tax and surtax (52% of $4,710,369.04 less $5,500.00)	2,443,891.
Alternative tax (Schedule 13)	2,443,457.
Excess profits tax (Schedule 15)	847,565.
Income and excess profits tax liability	3,291,023.
Tax assessed, Account No. 4182299	3,029,340.
Deficiency of income and excess profits tax	261,682.

ol. 37]

Schedule 13

Alternative Tax

t income adjusted	4,710,369.04
ss: Excess of net long-term capital gain over net short-term capital loss	1,670.63
dinary net income	4,708,698.41
rtial tax (52% of $4,708,698.41 less $5,500.00)	2,443,023.17
x on capital gain (26% of $1,670.63)	434.36
ternative tax	2,443,457.53

Schedule 14

Excess Profits Net Income

cess profits net income as disclosed by return	4,692,042.37
d: Net adjustment to net income (Schedule 11)	16,656.04
cess profits net income adjusted	4,708,698.41

Schedule 15

Computation of Excess Profits Tax

cess profits net income adjusted	$4,708,698.41
cess profits credit	908,427.26
justed excess profits net income	3,800,271.15
% of $3,800,271.15	1,140,081.35
% of $4,708,698.41	847,565.71

EXHIBIT A

POLAROID CORPORATION

Allocation of Abnormal Income

	Total	1952	1951	1950	1949	1948	1947	1946	1945	1944
Interest credited on excess profits tax overassessment @ 6%:										
1942										
On $12,217.68 8- 8-47 to 6-13-51	$ 2,820.11		$ 329.71	$ 733.06	$ 733.06	$ 733.06	$ 291.22			
21,836.32 6-30-47 to 6-13-51	5,181.79		596.16	1,310.18	1,310.18	1,310.18	655.09			
8,417.51 3- 9-47 to 6-13-51	2,150.00		226.93	505.05	505.05	505.05	407.92			
66,515.69 3-15-46 to 6-13-51	20,936.95		1,793.19	3,990.94	3,990.94	3,990.94	3,990.94	$ 3,180.00		
2,803.44 9-16-45 to 6-13-51	968.07		75.58	168.21	168.21	168.21	168.21	168.21	$ 51.44	
976.46 9-16-45 to 12-31-45	34.52								34.52	
99,788.56 9-16-45 to 12-31-45	1,742.87								1,742.87	
66,515.69 12-31-45 to 3-15-46	796.37							796.37		
23,294.01 12-31-45 to 3- 9-47	1,653.54						255.91	1,397.63		
1943										
On $71,675.36 9-16-45 to 7- 9-52	29,299.51	$2,250.40	4,300.52	4,300.52	4,300.52	4,300.52	4,300.52	4,300.52	1,245.99	
2,538.42 7-31-50 to 7- 9-52	307.95	79.70	152.31	75.94						
14,249.10 7-31-50 to 6-13-51	742.90		384.14	358.76						
5,820.60 3-18-48 to 6-13-51	1,130.79		156.91	349.23	349.23	275.42				
79,639.28 3-15-44 to 12-31-45	8,571.57								4,788.35	3,793.22
71,675.36 12-31-45 to 3-15-46	858.09							858.09		
Total interest credited ...	$77,195.03	$2,330.10	$8,015.45	$11,791.89	$11,357.19	$11,283.38	$10,069.81	$10,700.82	$7,853.17	$3,793.22
Interest charged on normal and surtax deficiency @ 6%:										
1942										
On $53,134.77 9-16-45 to 6-13-51	$18,310.37		$1,432.46	$3,188.09	$ 3,188.09	$ 3,188.09	$ 3,188.09	$ 3,188.09	$ 937.46	
1943										
On $45,747.57 9-16-45 to 6-13-51	15,764.74		1,233.30	2,744.85	2,744.85	2,744.85	2,744.85	2,744.85	807.19	
Total interest charged	$34,075.11		$2,665.76	$ 5,932.94	$ 5,932.94	$ 5,932.94	$ 5,932.94	$ 5,932.94	$1,744.65	
Net interest credited	$43,119.93									

[fol. 39] EXHIBIT B TO PETITION

CLAIM

TO BE FILED WITH THE COLLECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

COLLECTOR'S STAMP
(Date received)

The Collector will indicate in the block below the kind of claim filed, and fill in, where required, the certificate on the back of this form.

☒ Refund of Taxes Illegally, Erroneously, or Excessively Collected.

☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

TYPE OR PRINT

Name of taxpayer or purchaser of stamps Polaroid Corporation.

Street address 730 Main Street

City, postal zone number, and State Cambridge 39, Mass.

1. District in which return (if any) was filed Boston, Mass.

2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from Jan. 1, 1951, to Dec. 31, 1951

3. Kind of tax Income and Excess Profits Tax

4. Amount of assessment, $909,441.99; dates of payment Various 1952

5. Date stamps were purchased from the Government

[fol. 40] 6. Amount to be refunded $193,908.85 plus interest or such greater amount as may be determined

7. Amount to be abated (not applicable to income, estate, or gift taxes) $

The claimant believes that this claim should be allowed for the following reasons:

In the preparation of Schedule EP (Form 1120) taxpayer failed to give effect to Sec. 456 I.R.C. in computing its excess profits tax liability.

See schedules attached for corrected computation of tax and supporting data.

Tax Paid per Return as filed	$909,441.99
Tax Liability—Normal and Surtax, per Return as filed	715,533.14
Overpayment	$193,908.85

(Attach letter-size sheets if space is not sufficient)

I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Dated 9/29/53

Signed POLAROID CORP
C. P. Fuller
VP & Treas

POLAROID CORPORATION

Index of Schedules Attached to Form 843

SCHEDULE 1 Statement Relative to taxpayer claiming Benefits of Section 456 I.R.C.

SCHEDULE 2 Computation of Excess Profits Tax Under Section 456 I.R.C. for Years 1950 and 1951

[fol. 41]

SCHEDULE 3 Computation of Net Abnormal Income and Allocation to Prior Years for the Years 1950 and 1951

SCHEDULE	4	Analysis of Discovery, Invention and Development Expenses for Years 1950 and 1951
SCHEDULE	5	Analysis of Average Abnormal Income of Preceding Four Years for 1950 and 1951
SCHEDULE	6	Computation of Excess Profits Credit—Year 1951
SCHEDULE	7	Total Assets—January 1, 1951
SCHEDULE	8	Total Liabilities—January 1, 1951
SCHEDULE	9	Computation of Excess Profits Credit—Year 1950
SCHEDULE	10	Total Assets—January 1, 1950
SCHEDULE	11	Total Liabilities—January 1, 1950

POLAROID CORPORATION

STATEMENT RELATIVE TO TAXPAYER CLAIMING BENEFITS OF SEC. 456 I.R.C.

CALENDAR YEARS 1950 AND 1951

SCHEDULE 1

The taxpayer has been engaged in the manufacture of photographic and stereo equipment which resulted from discovery, invention of products and processes, and patent and development work carried on by its own employees over a period of more than twelve months.

In 1948, it placed on the commercial market a new type of camera, known as the Polaroid Land camera, which featured the taking and the production of a picture within [fol. 42] sixty seconds. The process has opened new fields for the use of a camera because of the ability to produce a finished photograph so quickly.

The taxpayer has also carried on extensive work in invention and development in the field of stereo optics and has developed camera lens and viewers in order to view a picture in the "Third Dimension". This new method

of viewing pictures has created a great demand in the movie industry for pictures that can be seen through viewers containing Polaroid lenses manufactured by the taxpayer.

The demand for the "picture in a minute camera" and the Polaroid sheets for the "3-D viewers" has created a source of income heretofore never experienced by this taxpayer or any other taxpayer. The income is attributable to the prior years in which the discovery, invention, patent and development work in connection with these products was carried on by the taxpayer.

[fol. 43]

POLAROID CORPORATION

Computation of Excess Profits Tax Under Sec. 456, I.R.C.

SCHEDULE 2

	1950		1951	
Net Income per Return as filed before Net Operating Loss Deduction		$744,358.08		$1,421,431.65
Add: Adjustments made by RAR dated Feb. 3, 1953 excluding Net Operating Loss Deduction		66,585.73		—
Net Income—as Adjusted		$810,943.81		$1,421,431.65
Less: Net Gain from Sale of Capital Assets	$ 2,109.65		$ 1,334.37	
Net Operating Loss Deduction	—	2,109.65	—	1,334.37
		$808,834.16		$1,420,097.28
Less: Allocation of Net Abnormal Income attributable to prior years:				
From 1950		359,355.00		
From 1951		—		689,714.00
		$449,479.16		$ 730,383.28
Add: Allocation of Net Abnormal Income attributable to Current Year:				
From 1951		107,926.00		—
Excess Profits Net Income		$557,405.16		$ 730,383.28
Less: Excess Profits Credit	$722,552.51		$792,032.48	
Unused Excess Profits Tax Credit — Carried over from 1950	—	722,552.51	83,252.36	875,284.84
Adjusted Excess Profits Net Income		($165,147.35)		($ 144,901.56)
Unused Excess Profits Credit Adjustment:				
184/365 of $165,147.35		$ 83,252.36		
Tax per above		$ —		$ —
Tax per Return as filed		—		193,908.85
Tax Refund Due Taxpayer		$ —		$ 193,908.85

[fol. 44]

POLAROID CORPORATION

Computation of Abnormal Income and Allocation to Prior Years
For Years 1950 and 1951

SCHEDULE 3

	Year 1950			Year 1951		
	Photo	Stereo	Total	Photo	Stereo	Total
1. Amount of Abnormal Income Received in Current Year	$5,057,908	$ 15,385	$5,073,293	$ 7,394,385	39,543	$ 7,433,928
2. Amount of Abnormal Income for four previous years	5,418,[illegible]	97,935	5,516,113	10,476,086	88,179	10,564,265
3. Average of #2	1,354,545	24,484	1,379,029	2,619,022	22,045	2,641,067
4. 115% of #3			1,585,883			3,037,227
5. Deduction in Current Year (Costs and Expenses) attributable to #1	4,443,395	9,718	4,453,113	6,163,279	1,726	6,185,005
6. Ratio of Excess of Item #1 over #4 to Item #1			68.74056%			9.14371%
7. Deductible Costs—Item #5 times Item #6			3,061,095			3,658,041
8. Net Abnormal Income—Item #1 less #4 Less #7			426,315			738,660
9. Gross Income by Products—Item #1	5,057,908	15,385	5,073,293	7,394,385	39,543	7,433,928
10. Deductions applicable to each Product	4,443,395	9,718	4,453,113	6,163,279	21,726	6,185,005
11. Excess of Item #9 over #10	614,513	5,667	620,180	1,231,106	17,817	1,248,923
12. Total of Item #11—All Products	620,180	620,180	620,180	1,248,923	1,248,923	1,248,923
13. % of Item #11 to #12	99.08623%	91.377%	100.00%	98.57341%	1.42659%	100.00%
14. Portion of Net Abnormal Income Allocated to Each Product	$ 422,419	$ 3,896	$ 426,315	$ 728,122	$ 10,538	$ 738,660
15. Net Abnormal Income attributable to following years based on discovery, invention, patent and development costs:						
1943	$ —0—	$ 640	$ 640	$ —0—	1,632	$ 1,632
1944	1,783	916	2,699	2,870	2,334	5,204
1945	24,179	1,822	26,001	38,911	4,641	43,552
1946	96,941	241	97,182	156,004	613	156,617
1947	74,917	95	75,012	120,563	243	120,806
1948	91,120	0—	91,120	146,638	—0—	146,638
1949	66,701	—0—	66,701	107,339	0	107,339
	$ 355,641	$ 3,714	$ 359,355	$ 572,325	$ 9,463	$ 581,788
1950	66,778	182	66,960	107,463	463	107,926
	$ 422,419	$ 3,896	$ 426,315	$ 679,788	$ 9,926	$ 689,714
1951	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

[fol. 46]

POLAROID CORPORATION

Analysis of Discovery, Invention and Development Expenses

SCHEDULE 4

	Year 1950				Year 1951			
	Photo		Stereo		Photo		Stereo	
	Amount	%	Amount	%	Amount	%	Amount	%
1943			$ 60,695	16.43947			$ 60,695	15.48437
1944	$ 7,150	.42217	86,819	23.51525	$ 7,150	.39415	86,819	22.14906
1945	96,943	5.72401	172,640	46.76018	96,943	5.34405	172,640	44.04351
1946	388,667	22.94890	22,806	6.17709	388,667	21.42553	22,806	5.81822
1947	300,369	17.73533	9,040	2.44851	300,369	16.55804	9,040	2.30626
1948	365,332	21.57109	—	—	365,332	20.13917	—	—
1949	267,425	15.79015	—	—	267,425	14.74198	—	—
1950	267,733	15.80835	17,203	4.65950	267,733	14.75896	17,203	4.38879
1951					120,418	6.63812	22,773	5.80979
	$1,693,619	100.00000	$ 369,203	100.00000	$1,814,037	100.00000	$ 391,976	100.00000

[fol. 46]

POLAROID CORPORATION

Analysis of Average Abnormal Income of Preceding Four Years

Schedule 5

	Photo	Stereo
For 1951		
1947	$ —	$ 7,077
1948	39,155	55,867
1949	5,379,023	9,850
1950	5,057,908	15,385
Totals	$10,476,086	$88,179
Average	$ 2,619,022	$22,044
For 1950		
1946	$ —	$25,141
1947	—	7,077
1948	39,155	55,867
1949	5,379,023	9,850
Totals	$ 5,418,178	$97,935
Average	$ 1,354,545	$24,484

[fol. 47]

POLAROID CORPORATION

Excess Profits Credit Based on Invested Capital
Calendar Year 1951

Schedule 6

Total Assets—As Adjusted—Jan. 1, 1951		$3,796,417.37
Total Liabilities—As Adjusted—Jan. 1, 1951		493,680.21
Equity Capital—January 1, 1951		$3,302,737.16
Add Recent Loss Adjustment		
1946 Net Operating Loss — R.A.R. 6/8/50	$1,433,379.85	
1947 Net Operating Loss — R.A.R. 6/8/50	2,077,940.39	
1948 Net Operating Loss — R.A.R. 2/3/53	822,144.82	
	$4,333,465.06	
1949 Net Income—R.A.R. 2/3/53	808,269.70	3,525,195.36
Total		$6,827,932.52
Equity Capital January 1, 1950		
Total Assets	$2,969,121.74	
Total Liabilities	238,763.99	
Balance	$2,730,357.75	
Increase in Equity Capital from January 1, 1950 to January 1, 1951		572,379.41
Balance		$6,255,553.11

[fol. 48] *Computation of Credit*

12% of $5,000,000.00			$ 600,000.00
10% of 1,255,553.11			125,555.31
$6,255,553.11			$ 725,555.31
Less Inadmissable assets:			
Average daily inadmissables		$ 14,000.00	
Average daily total assets			
January 1, 1951	$3,796,417.37		
Dec. 31, 1951	5,397,348.62	4,599,688.30	
Percentage of Inadmissible to Total		.304369%	
Reduction on account of Inadmissables .304369% of $725,555.31			2,208.36
			$ 723,346.95
Add 12% of $572,379.41, increase in equity capital since 1/1/50			68,685.53
TOTAL EXCESS PROFITS CREDIT BASED ON INVESTED CAPITAL			$ 792,032.48

[fol. 49]

POLAROID CORPORATION

TOTAL ASSETS AS OF JANUARY 1, 1951

SCHEDULE 7

Assets beginning of Year:			
Per Tax Return			$3,404,257.39
Adjustments by Revenue Agents Report dated 2/3/53:			
Year 1948:			
Excessive Depreciation		$ 6,299.81	
Patent Department Expense Capitalized		27,047.62	
Repairs Capitalized		1,255.05	
		$34,602.48	
Less:			
Amortization Allowed on Patents Capitalized	$ 795.52		
Adjustment of Gain on Sale of Equipment due to Change in Depreciation	(142.55)	652.97	33,949.51
Year 1949:			
Excessive Depreciation		$59,276.24	
Patent Department Expense Capitalized		23,665.02	
Repairs Capitalized		11,950.53	
		$94,891.79	
Less:			
Amortization Allowed on Patents Capitalized	$2,287.07		
Adjustment of abandonment Loss due to Depreciation Change	1,998.75		
Adjustment to Gains on Sale of Equipment Due to Depreciation Change	414.74	4,700.56	90,191.23

[fol. 50] Year 1950:			
Excess Depreciation		$46,718.43	
Patent Department Expense Capitalized		21,267.40	
Repairs Capitalized		6,223.62	
		$74,209.45	
Less:			
Amortization Allowed on Patents Capitalized	$3,608.61		
Adjustment to Gains on Sale of Equipment due to change in Depreciation	708.91	4,317.52	69,891.93
Refund on Section 722 Claim —R.A.R. dated 5/4/51			138,320.13
Reorganization Expenses not deducted for Income Tax Purposes:			
Year 1938		$ 8,608.29	
Year 1940		10,829.59	
Year 1945		40,369.31	59,807.19
Assets Beginning of Year— As Adjusted			$3,796,417.37

[fol. 51]

POLAROID CORPORATION

Total Liabilities As of January 1, 1951

Schedule 8

Liabilities beginning of Year:			
Liabilities per tax return			$403,230.53
Adjustments made by R.A.R. dated 2/3/53:			
Massachusetts Income and Excise Tax for 1950			
Liability per Federal Return		$59,357.73	
Actual (Paid in 1951)		61,804.13	
Additional Mass. Income and Excise Tax for 1949 (Unpaid as of 12/31/52)		$ 2,446.40 4,504.52	
Additional Mass. Income and Excise Tax for 1950 (Unpaid as of 12/31/52)		4,504.52	
Federal Income Taxes for 1950:			
Liability per Tax Return	$16,931.36		
Total as determined by R.A.R. (Unpaid at 12/31/52)	94,659.19	77,727.83	90,449.68
Liabilities Beginning of Year As Adjusted			$493,680.21

[fol. 52]

POLAROID CORPORATION

Excess Profits Credit Based on Invested Capital
Calendar Year 1950

Schedule 9

Total Assets—as Adjusted		$2,969,121
Less Total Liabilities as adjusted		238,763
Balance		$2,730,357
Add Recent Loss Adjustment		
1946 Net Operating Loss — R.A.R. 6/8/50	$1,433,379.85	
1947 Net Operating Loss — R.A.R. 6/8/50	2,077,940.39	
1948 Net Operating Loss — R.A.R. 2/3/53	822,144.82	
	$4,333,465.06	
1949 Net Income — R.A.R. 2/3/53	808,269.70	3,525,195
Total		$6,255,553
Computation of Credit		
12% of $5,000,000.00	$ 600,000.00	
10% of 1,255,553.11	125,555.31	
Total Tentative Credit		$ 725,555
Less Inadmissable Assets		
Average Daily Inadmissable Assets	$ 14,000.00	
Average Daily Total Assets		
January 1, 1950 .... $2.969,121.74		
December 31, 1950 3,796,417.37		
	3,382,769.56	
Percentage of Inadmissable to Total	.4138621%	
Reduction on account of Inadmissable Assets—		
Total Excess Profits Credit Based on .4138621% of $725,555.31		3,00
Invested Capital		$ 722,55

[fol. 53]

SCHEDULE 10

Assets—1/1/50—Per Tax Return			$2,646,853.69
Adjustments Per R.A.R. dated 2/3/53:			
Year 1948:			
Excessive Depreciation		$ 6,299.81	
Patent Department Expense Capitalized		27,047.62	
Repairs Capitalized		1,255.05	
		$34,602.48	
Less:			
Amortization Allowed on Patents Capitalized	$ 795.52		
Adjustment of Gain on Sale of Equipment due to Change in Depreciation	(142.55)	652.97	33,949.51
Year 1949:			
Excessive Depreciation		$59,276.24	
Patent Department Expense Capitalized		23,665.02	
Repairs Capitalized		11,950.53	
		$94,891.79	
Less:			
Amortization Allowed on Patents Capitalized	$2,287.07		
Adjustment of Abandonment Loss due to Depreciation Change	1,998.75		
Adjustment to Gains on Sale of Equipment due to Depreciation Change	414.74	4,700.56	90,191.23
Refund on Section 722 Claim —R.A.R. dated 5/4/51			138,320.12
Reorganization Expenses not deducted for Income Tax Purposes:			
Year 1938		$ 8,608.29	
Year 1940		10,829.59	
Year 1945		40,369.31	59,807.19
ASSETS BEGINNING OF YEAR—AS ADJUSTED			$2,969,121.74

[fol. 54]

POLAROID CORPORATION

TOTAL LIABILITIES—JANUARY 1, 1950

SCHEDULE 11

Liabilities beginning of Year 1/1/50 Per Tax Return	$233,643.43
Adjustments per R.A.R. dated 2/3/53 Additional Massachusetts Income and Excise Tax for 1949	5,770.93
	$239,414.36
Less Overaccrual Mass. Excise Tax	650.37
LIABILITIES AS OF JAN. 1, 1950 AS ADJUSTED	$238,763.99

[fol. 55] EXHIBIT C TO PETITION

COMPUTATION OF NET INCOME OF PETITIONER SUBJECT TO EXCESS PROFITS TAX FOR YEARS 1951, 1952 AND 1953, RESPECTIVELY

	Polaroid Land camera and photographic pack	3-D Devices
1951		
Net income	$1,231,106	$ 17,817
deduct abnormal income allocated back to prior years	679,788	9,926
	551,318	7,891
add abnormal income allocated back from subsequent years	155,601	39,760
Net income subject to excess profits tax	706,919	47,651
1952		
Net income	1,452,759	2,885
deduct abnormal income allocated back to prior years	710,907	1,368
	741,852	1,517
add abnormal income allocated back from subsequent years	148,977	89,914
Net income subject to excess profits tax	890,829	91,431
1953		
Net income	2,480,542	1,587,580
deduct abnormal income allocated back to prior years	1,429,570	772,912
Net income subject to excess profits tax	1,050,972	814,668

[fol. 56]

BEFORE THE TAX COURT OF THE UNITED STATES

[Title omitted]

ANSWER—Filed April 9, 1957

Respondent, for answer to the petition, admits and denies as follows:

1. Admits the allegations of the first sentence; admits that the returns for the periods here involved were filed with the Collector and Director of Internal Revenue for the District of Massachusetts; denies the remaining allegations.

2. Admits the allegations of the first sentence; denies the allegations of the second sentence.

3. Admits that petitioner's claim for refund for the calendar year 1951 (a copy of which is attached to the petition and marked Exhibit B) was filed with the Director of Internal Revenue, for the District of Massachusetts on October 1, 1953, within the period provided by the Internal Revenue Code for the filing of such refund claim; admits the allegations of the second sentence; denies the remaining allegations.

4. Admits the allegations.

5. (a) to (e), inclusive. Denies the allegations.

[fol. 57] 6. (a) and (b). Admits the allegations.

(c) Denies the allegations.

(d) Admits the allegations.

(e). Admits that in the latter part of 1948, petitioner placed on the market a type of camera known as the Polaroid Land camera, which produces finished photographs in one minute; denies the remaining allegations.

(f) Admits that the camera and the photographic pack required for its use were inventions; denies the remaining allegations.

(g) to (o), inclusive. Denies the allegations.

7. Denies the allegations.

8. Denies generally each and every allegation not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the relief sought be denied.

Nelson P. Rose, Chief Counsel, Internal Revenue Service.

Of Counsel: John W. Edwards, Regional Counsel; Paul J. Henry, Attorney, Internal Revenue Service, 419 Houghton-Dutton Building, 55 Tremont Street, Boston 8, Massachusetts.

ek 3/29/57

[fol. 58]

BEFORE THE TAX COURT OF THE UNITED STATES

[Title omitted]

STIPULATION OF FACTS—March 5, 1959

It is hereby stipulated that for the purposes of this proceeding the following statements shall be accepted as facts without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated or to object to the admission of evidence of such facts on the grounds of materiality or revelancy:

1. Attached hereto and made a part hereof as indicated are the following documents:

Documents	Exhibit Numbers
Petitioner's Claim (Form 843) dated September 29, 1953	1-A
Petitioner's Form 1120—Calendar Year 1951	2-B
Petitioner's Form 1120 (Amended)—Calendar Year 1951	3-C
Petitioner's Form 1120—Calendar Year 1952	4-D
Petitioner's Form 1120—Calendar Year 1953	5-E

2. Petitioner made no sales of Polaroid Land cameras, photographic packs or photographic accessories prior to 1948.

[fol. 59] 3. The dollar amount of petitioner's sales of Polaroid Land cameras, photographic packs, and photographic accessories during the years 1948 to 1950, inclusive, was as follows:

Year	Sales
1948	$ 39,155
1949	5,379,023
1950	5,057,108

Attached hereto and made a part hereof as Exhibit 6-F is Analysis of Classification of Sales prepared from petitioner's General and Subsidiary Ledgers.

4. The dollar amount of petitioner's sales of Polaroid Land cameras, photographic packs, and photographic accessories during the year 1951 was $7,394,385; the amount of petitioner's expenses incurred in connection with such sales was $6,164,973; the amount of petitioner's net income from such sales was $1,229,412.

5. The dollar amount of petitioner's sales of Polaroid Land cameras, photographic packs, and photographic accessories during the year 1952 was $11,076,969; the amount of petitioner's expenses incurred in connection with such sales was $9,611,657; the amount of petitioner's net income from such sales was $1,465,312.

6. The dollar amount of petitioner's sales of Polaroid Land cameras, photographic packs, and photographic accessories during the year 1953 was $17,212,784; the amount of petitioner's expenses incurred in connection with such sales was $14,727,692; the amount of petitioner's net income from such sales was $2,485,092.

7. The amount of the expenses incurred by petitioner in the invention and development of Polaroid Land cam-[fol. 60] eras, photographic packs, and photographic accessories during the years 1944 to 1953, inclusive, was as follows:

Year	Expenses
1944	$ 7,150
1945	96,943
1946	388,667
1947	300,369
1948	365,332
1949	267,425
1950	267,733
1951	143,986
1952	213,776
1953	243,936

8. No expenses were incurred by petitioner in the invention and development of Polaroid Land cameras, photographic packs or photographic accessories prior to the year 1944.

9. The dollar amount of petitioner's sales of stereo products during the years 1946 to 1950, inclusive, was as follows:

Year	Sales
1946	$25,141
1947	7,077
1948	55,867
1949	9,850
1950	15,385

10. The dollar amount of petitioner's sales of stereo products during the year 1951 was $39,543; the amount of petitioner's expenses incurred in connection with such sales was $21,726; the amount of petitioner's net income from such sales was $17,817.

11. The dollar amount of petitioner's sales of stereo products during the year 1952 was $85,443; the amount of petitioner's expenses incurred in connection with such [fol. 61] sales was $82,558; the amount of petitioner's net income from such sales was $2,885.

12. The dollar amount of petitioner's sales of stereo products during the year 1953 was $6,310,201; the amount of petitioner's expenses incurred in connection with such

sales was $4,717,671; the amount of petitioner's net income from such sales was $1,592,530.

13. The amount of expenses incurred by petitioner in the invention and development of its stereo products during the years 1943 to 1953, inclusive, was as follows:

Year	Expenses
1943	$ 60,695
1944	86,819
1945	172,640
1946	22,806
1947	9,040
1948	—
1948	—
1950	17,203
1951	22,773
1952	51,602
1953	143,953

14. The aggregate dollar amount of petitioner's gross income resulting from sales of all its products during the years 1947 to 1953, inclusive, was as follows:

Year	Gross Income
1947	$ 1,288,933
1948	1,062,912
1949	6,278,205
1950	6,011,582
1951	8,862,893
1952	12,465,089
1953	25,191,360

[fol. 62] 15. The Polaroid Land process including cameras, photographic packs, and photographic accessories as well as devices and technique used in the exhibition of three dimensional motion pictures including stereo products arose out of work, including research, by petitioner over a period of more than twelve months. But nothing in this paragraph contained shall be construed as in any way limiting petitioner's position that the sole purpose of such work was discovery and that such work culminated in discovery.

16. In the year 1951 the taxpayer's claims for relief under section 722 of the Internal Revenue Code of 1939 were settled and as a result interest on the resultant overassessments for the years 1942 and 1943 of $74,864.93 was computed to June 13, 1951. As a further result of this settlement on the same claims, interest on the deficiencies in income tax for those years of $34,075.11 was computed to June 13, 1951.

For the sole purpose of facilitating the trial of this proceeding it is further stipulated:

17. That if the Court should determine (1) that petitioner's income in the taxable years 1951, 1952, and 1953 from the invention by petitioner of the Polaroid Land process including cameras, photographic packs, and photographic accessories constituted abnormal income within the intendment of section 456 of the Internal Revenue Code of 1939; (2) that petitioner's income in the taxable years 1951, 1952, and 1953 from the invention by petitioner of devices and technique used in exhibition of three dimensional motion pictures including stereo products constituted abnormal income within the intendment of section 456 of the Internal Revenue Code of 1939; and (3) that in the taxable year 1951 in determining petitioner's net abnormal income arising out of interest credited on overassess-
[fol. 63] ments of excess profits tax under section 722 of the Internal Revenue Code of 1939 in the sum of $74,864.93 the interest charged on normal or surtax deficiencies of $34,075.11 was not deductible, then

(a) the amounts of net abnormal income for the years 1950 to 1953 from each of the above sources, respectively, should the Court determine the substantive issue with respect to the income from such source in petitioner's favor are as follows:

Year	Photo	Stereo	Interest
1950	$ 422,419	$ 3,896	$ —
1951	727,120	10,538	74,864.93
1952	786,315	1,548	—
1953	1,602,498	1,026,934	—
Total	$3,538,352	$1,042,916	$74,864.93

(b) the allocation of such amounts of net abnormal income from the respective sources, should the Court determine the substantive issue with respect to the income from such source in petitioner's favor, is as follows:

Year	Photo	Stereo	Interest
Prior to 1950			
1950	462,262	30,773	11,791.89
1951	212,690	40,495	8,015.45
1952	231,193	90,374	—
1953	170,306	251,613	—
Total	$3,538,352	$1,042,916	$74,864.93

18. Nothing in this stipulation shall be construed in any way as any admission or concession by the Government that petitioner had abnormal income within the intendment of section 456 from sources (1) and (2) above, or that in determining petitioner's net abnormal income arising out of the interest credited on the overassessments of excess profits tax under section 722, the interest charged on the normal and surtax deficiencies was not deductible. The [fol. 64] sole purpose of this stipulation is to facilitate the trial of this proceeding by agreeing upon the computations of the amounts of net abnormal income and their allocations to prior years, should the Court determine in favor of petitioner the substantive issue with respect to the existence of such abnormal income.

(exhibits omitted)

Isaac M. Barnett, Counsel for Petitioner, Arch M. Cantrall, Chief Counsel, Internal Revenue Service.

JEM/gp 3-5-59

IN UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MINUTE ENTRY OF ARGUMENT—April 5, 1960

On April 5, 1960, this cause came on to be heard and was fully heard by the Court, Honorable Peter Woodbury, Chief Judge, and Honorable John P. Hartigan and Honorable Bailey Aldrich, Circuit Judges, sitting.

[fol. 65]

IN UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 5622

POLAROID CORPORATION, Petitioner,

—v.—

COMMISSIONER OF INTERNAL REVENUE, Respondent.

ON PETITION FOR REVIEW OF THE DECISION
OF THE TAX COURT OF THE UNITED STATES

Before: Woodbury, Chief Judge, and Hartigan and Aldrich, Circuit Judges.

Isaac M. Barnett, with whom Julius Silver and Silver, Saperstein & Barnett were on brief, for petitioner.

Norman H. Wolfe, Attorney, Department of Justice, with whom Charles K. Rice, Assistant Attorney General, and Lee A. Jackson and Harry Marselli, Attorneys, Department of Justice, were on brief, for respondent.

OPINION OF THE COURT—May 3, 1960

Aldrich, Circuit Judge: This is a petition by Polaroid Corporation, hereinafter called taxpayer, to review a de-

cision of the Tax Court holding that certain income received during the years 1951, 1952 and 1953 did not constitute "abnormal income" within the meaning of §456(a)(2), Internal Revenue Code of 1939, 64 Stat. 1186 (1951), so as to qualify for the relief provided therein from the Korean War excess profits tax.[1] The taxpayer also con- [fol. 66] tests a ruling that, in computing its net abnormal income for 1951 under §456(a)(3) of the Int. Rev. Code of 1939, the interest with which it was credited in 1951 upon its successful claim for an excess profits tax refund for the years 1942 and 1943 must be reduced by the interest it was charged on income tax deficiencies which resulted from the reduced excess profits tax. All facts were stipulated, and the only questions are of law.

Turning to the first issue, it appears that taxpayer was incorporated in 1937. In argument before this court it described itself as "a discovery company," exclusively engaged in exploiting its own discoveries. Edwin H. Land, its President and Director of Research, is internationally known for inventions in the optical and photographic fields, perhaps the most notable of which is the Polaroid Land Camera and film, income from the manufacture and sale of which constitutes the principal matter herein involved.[2] The camera and film together (they cannot be used separately) are termed by taxpayer the Polaroid Land process. This process is unique in that it enables any user to develop his own pictures and obtain positive prints anywhere, sixty seconds after exposure. Taxpayer describes this process as a "revolutionary discovery." We shall regard that characterization as accurate. Because of numerous patents, taxpayer has no competitors. The result has been a very substantial return of income.

Taxpayer, under Land's direction, started to develop its process in 1944. Much expenditure of time and money was

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[1] Excess Profits Tax Act of 1950, 64 Stat. 1137 (1951), which, with later additions, was classified as §§430-74, Int. Rev. Code of 1939, and is referred to hereinafter as the KW Act.

[2] Also involved is income from sales of taxpayer's synthetic light polarizer for 3-D motion pictures. The parties agree the issues are the same, and that this matter need not be separately considered.

required before its satisfactory achievement in 1947. Unfortunately for taxpayer, large scale production and commercial success coincided with the Korean War years, as a consequence of which income attributable in part to activi-
[fol. 67] ties in earlier years fell within the provisions of the KW Act. The Act contains several relief provisions. Taxpayer asserts that one in particular is applicable. The Commissioner has disagreed, and the Tax Court has sustained him.

Under the provisions of §456 of the KW Act, income is regarded as "abnormal income," and as such is relieved from the full incidence of the excess profits provisions by reallocation to other tax years, if it falls into certain specified "classes," and meets certain additional requirements which were here concededly met. The principal issue here is whether the income falls within that class described in §456(a)(2)(B): "Income resulting from exploration, discovery, or prospecting, or any combination of the foregoing, extending over a period of more than 12 months; . . . ."[3] Taxpayer asserts that the word "discovery" is

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[3] The relevant portions of §456(a) are as follows:

"(a) Definitions. For the purposes of this section—

(1) Abnormal income. The term 'abnormal income' means income of any class described in paragraph (2) . . . if the taxpayer normally derives income of such class but the amount of such income of such class includible in the gross income of the taxable year is in excess of 115 per centum of the average amount of the gross income of the same class for the four previous taxable years . . . .

(2) Separate classes of income. Each of the following subparagraph shall be held to describe a separate class of income:

(A) Income arising out of a claim, award, judgment, or decree, or interest on any of the foregoing; or

(B) Income resulting from exploration, discovery, or prospecting, or any combination of the foregoing, extending over a period of more than 12 months; or

(C) Income from the sale of patents, formulae, or processes, or any combination of the foregoing, developed over a period of more than 12 months; or

(D) Income includible in gross income for the taxable year rather than for a different taxable year by reason of a change in the taxpayer's method of accounting.

[fol. 68] broad enough to encompass its process. The government contends that in the context of the Act it relates only to discovery of coal, oil, gas and other natural resources. It bases this in part upon internal evidence, and in part upon legislative history.

Starting with subparagraph (B), standing alone, we note that the word "discovery" admits of so many meanings that some interpretation is called for.[4] The possibility of a number of meanings for one word is a species of ambiguity. We then observe that the word is not isolated, but is sandwiched between the words "exploration" and "prospecting." The government, accordingly, invokes the doctrine of *noscitur a sociis.* In case of ambiguity this is an "appropriate and reasonable," though not always determinative test. *Russell Motor Car Co.* v. *United States,* 1923, 261 U.S. 514, 519. On a proper occasion "such association justifies, if it does not imperatively require," the application of a restricted meaning. *Neal* v. *Clark,* 1877, 95 U.S. 704, 709. It is particularly appropriate where one meaning of each of the grouped words has a readily apparent common denominator. Thus the words "barrel," "lock" and "stock" have each, individually, a number of quite different meanings. But if used in the phrase, "lock, stock and barrel" there could be little difficulty in determining which particular one of the several meanings was intended. The word "discovery" is clearly identified with the mining industry. See note 4, *supra.* So also are "exploration" and [fol. 69] "prospecting." Accordingly we find a consistent,

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All the income which is classifiable in more than one of such subparagraphs shall be classified under the one which the taxpayer irrevocably elects. The classification of income of any class not described in subparagraphs (A) to (D), inclusive, shall be subject to regulations prescribed by the Secretary."

[4] According to Webster's New International Dictionary (Second Edition, Unabridged) it includes, "1. . . . Finding out or ascertaining something previously unknown or unrecognized; . . .". One of these meanings, which we will come to later, is "5. *Mining.* The original finding of part of a vein or lode. It is a prime requisite in the valid location of a mining claim."

integrated unit, each portion of which casts light upon the other.[5]

Taxpayer makes no response to this (other than that set forth in the footnote), except a bare statement that the doctrine of *noscitur a sociis* is inapplicable. Its position is that since the dictionary permits it, "discovery" must be taken to comprehend inventions, or at least major "basic" inventions. If "discovery" is to have that breadth of meaning we could not accept any distinction based upon degrees of invention.[6] While we agree that basic inventions can be described as discoveries, so may any invention, no matter how minor, if it is of sufficient consequence to be entitled to a patent. Cf. United States Constitution, Art. 1, §8, Cl. 8; 35 U.S.C. §§100(a), 101. If the word "discovery" is to be taken as broad enough to include inventions, we see no reason for including some and excluding others. We [fol. 70] are normally reluctant to adopt a construction of

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[5] Taxpayer counters by suggesting that by restricting all three words to mining there would be redundancy. That is not so. *"Discovery"* in this connection has already been defined. See note 4, *supra*. In the Encyclopedia Britannica (11th ed. 1911), in an article on Mining, is found the following: "MINING . . . . The term is not limited to [coal and ore deposits] . . . but includes . . . operations for oil, natural gas or brine . . . . *Prospecting* . . . . The work of prospecting is usually left to adventurous men . . . . The prospector is guided in his search by a knowledge of the geological conditions [etc.] . . . . *Exploratory Work* . . . . Exploratory work is associated intimately both with prospecting and with development, but the purpose is quite distinct from either prospecting, development or working, and it is of importance that this should be clearly recognized . . . ." (We quote the 11th edition of the Encyclopedia both because of its authoritative character, and because it was current when the words "exploration, discovery and prospecting" first appeared in the taxing statutes. See infra.)

[6] It seems peculiarly inappropriate that a person in taxpayer's position should be the one to attempt a distinction between original invention and subsequent minor improvements. Taxpayer possessed over a hundred patents related to the development of its process. How is one to distinguish between that part of income attributable to the original, basic invention, and that attributable to subsequent minor ones? This matter is, in a sense, moot in this case, because the parties have stipulated the amount of the tax. However, the problems it suggests are important.

a taxing statute which would create difficult administrative problems.[7] We are entirely unwilling to do so here where the act makes no suggestion of any standard.[8]

However, there is an equally serious difficulty if "discovery" is to include all processes and patented inventions. What, then, is the purpose of subparagraph (C), "Income from the sale of patents, formulae, or processes," of §456 (a)(2)? See, *supra*, note 3. True, that subparagraph relates only to income from the *sale* of the patent or process. But subparagraph (B) relates to *all* income. If "discovery" in subparagraph (B) includes inventions, what is the role of subparagraph (C)? If there is a big hole in the fence for the big cat, need there be a small hole for the small one?

The existence of subparagraph (C) casts further light upon the intended meaning and scope of subparagraph (B). Suppose that instead of manufacturing under its patents, taxpayer had licensed its process to others. Would it be [fol. 71] contended that the royalties could be claimed as abnormal income under subparagraph (B), although admit-

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[7] As will be discussed later, certain changes were made in the KW Act over its World War II (WW II) counterpart for the express purpose of avoiding such problems.

[8] In *G. D. Searle & Co.* v. *Jarecki*, 7 Cir., 1960, 274 F.2d 129, a case seemingly on all fours with this one, except that it came up on the granting of the government's motion for summary judgment of dismissal, the taxpayer claimed as abnormal income under the KW Act income from sales of certain ethical drugs. It was agreed that prior to the time taxpayer had developed and patented the formulae such compounds had never been in existence, and that they had had enormous commercial success. The court said, "The common accepted meaning of the word 'discovery' includes 'Finding out or ascertaining something previously unknown or unrecognized; as Curie's *discovery* of radium' (Webster's New International Dictionary (Unabridged 2d ed.) p. 745)." Then, cautioning that it was not "indicating any expression of opinion on the factual issue," it remanded the case to the district court to determine whether these drugs were "actually discoveries" within that definition. In view of the facts already established with relation to these drugs, we are less than clear by what tests the district court is to resolve this question, or how, in general, the Commissioner is to distinguish those patentable inventions which are discoveries from those which are not.

tedly, should there be a sale of the process, the proceeds would fall under subparagraph (C)? Rather, it seems more reasonable to hold that Congress, having specifically provided for sales, did not intend by some more general clause to cover income of a similar nature but of less magnitude, i.e., income from a single year's use. There is an even more compelling argument. It is to be noted that §456 does not group together all sources of abnormal income, but is constructed so that the income-percentage requirements must be separately applied as to each classification or group. In determining whether, for example, abnormal income resulting from a judgment (A) is of sufficient size to qualify for relief, it is not possible to take into account abnormal income from prospecting (B). There could be no purpose to this unless each classification or group was intended to have some homogeneity within itself. This is an additional reason for applying the doctrine of *noscitur a sociis* within each group, and at the same time for differentiating one group from another. Taking the statute as a whole, we cannot accept the contention that subparagraph (B) was intended to encompass taxpayer's manufacturing income resulting from its process. On the contrary, we think it clear that "discovery" as used in that subparagraph relates to the mining industries, and to nothing else.

Ordinarily we would stop here, but since the opposite conclusion was reached in *G. D. Searle & Co.* v. *Jarecki*, 7 Cir., 1960, 274 F.2d 129, *supra* n. 8, we will deal briefly with the legislative history to which the government has devoted its brief. This history falls into two parts; the use since 1918 of the words "exploration," "discovery," and "prospecting" in conjunction, solely with relation to the mining industry, and the particular changes effected by the KW Act over its predecessor, the World War II [fol. 72] Act.[9] In Title III, "War-Profits and Excess-Profits Tax," of the Revenue Act of 1918, c. 18, 40 Stat. 1057 (1919), we find a limit placed on the excess profits tax that could be

[9] Excess Profits Tax Act of 1940, c. 757, 54 Stat. 975, which, together with later additions and amendments, was classified as §§710-84, Int. Rev. Code of 1939, and is hereinafter referred to as the WW II Act.

imposed on the proceeds from "a bona fide sale of mines, oil or gas wells, . . . where the principal value of the property has been demonstrated by prospecting or exploration and discovery work done by the taxpayer . . . ." Section 337, 40 Stat. 1096. An identical provision in the income tax portion of the statute, §211(b), 40 Stat. 1064, limited the surtax upon such income in the case of individual taxpayers. Congressional history discloses that these provisions were designed to encourage the search for oil and ore deposits during wartime, and to offset the unfairness of taxing in a single year income which was possibly the result of many unprofitable years of prior search. See S. Rep. No. 617, 65th Cong., 3d Sess. 6 (1918) (1939—1 Cum. Bull. (Part 2) 117, 120-21). They were repeated in the income tax and the excess profits tax titles of the Revenue Act of 1921, c. 136, §§211(b), 337, 42 Stat. 237, 277. There was no further excess profits taxation until 1940, but these words continued to appear in the income tax statutes, with one exception,[10] until excess profits tax imposition returned with World War II. By that time, in the light of this repeated and almost continuous application to the mining industry (and no other), we think that these words had become well-recognized words of art.

[fol. 73] The World War II excess profits tax act exhibits a major schematic change from the earlier acts, but again we find the words "exploration," "prospecting," and "discovery" used together in a relief provision. The here relevant portion (noticeably similar, as will be seen, to §456 of the KW Act) was §721(a)(2)(C):[11] "Income resulting from

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[10] The single exception is the Revenue Act of 1934, c. 277, 48 Stat. 680. When the provision was revived in the Revenue Act of 1936, c. 690, §105, 49 Stat. 1678, the phrase in question was changed to "prospecting or exploration or [instead of "and"] discovery work," and the section as a whole was limited to oil or gas property. In this form it was carried into the Internal Revenue Code of 1939, c. 2, §105, 53 Stat. 36 (now §632 of the Int. Rev. Code of 1954).

[11] Excess Profits Tax Act of 1940, c. 757, §201, 54 Stat. 986, as amended, Excess Profits Tax Amendments of 1941, c. 10, §5, 55 Stat. 21. Subparagraph (C) of the amended act was derived from, and is practically identical to, subsection (c) of the original §721.

exploration, discovery, prospecting, research, or development of tangible property, patents, formulae, or processes, or any combination of the foregoing, extending over a period of more than 12 months; . . . ." Discussion on the floor of Congress indicates that the mining industry was intended as one of the primary beneficiaries of this relief. See, e.g., 86 Cong. Rec. 12474-77, 12350, 12919 (1940); 87 Cong. Rec. 1636 (1941). With the Korean War enactment, subparagraph (C) of §721(a)(2) was split in two. It is interesting to note the form of this division. The words "Exploration, discovery, prospecting" were taken as one group, and placed in subparagraph (B) of the new law, while "patents, formulae, or processes" were placed together in subparagraph (C), and at the same time the words "research, or development of tangible property" were dropped. These changes "redefined and restricted" the types of income to which this special treatment was to be afforded. H.R. Rep. No. 3142, 81st Cong., 2d Sess. 63 (1950) (1951—1 Cum. Bull. 187, 231). The House and Senate reports described the excised portion as a "potential loophole of major dimensions," and stated that it was being omitted "because there appeared to be no means of restricting such an adjustment to truly meritorious cases other than by the introduction of a large degree of administrative discretion of the type required by the general re-[fol. 74] lief clause of the World War II law (section 722), and because the need for a reallocation of such income seemed to be materially less than in the other classes of income described . . . ." *Id.* at 13 (1951—1 Cum. Bull. at 195); S. Rep. No. 2679, 81st Cong., 2d Sess. 14 (1950) (1951—1 Cum. Bull. 240, 249). Thus even "meritorious cases" that would have come under this now excluded phrase were deliberately sacrificed in the interest of administrative simplification.[12]

[12] In this connection it is to be noted that it was stipulated that taxpayer's income from its process was "income from the sales of tangible property arising out of research and development which extended over a period of more than 12 months." Thus taxpayer must contend that it remained within the purview of this statute after the words which were the most applicable to it were removed.

In the face of this history, it would be difficult for us to feel that there was introduced into the newly created subparagraph (B) with the word "discovery" a scope of meaning which would include manufacturer's profits from inventions, whether those inventions were revolutionary, or otherwise. Taken in conjunction with internal evidence within the statute itself, we find it impossible.

We turn next to taxpayer's contention that even if it is not entitled to classify the income in question as "discovery" income under §456(a) (2) (B), it is nonetheless entitled to relief under the last sentence of subsection (a) (2). This reads, "The classification of income of any class not described in subparagraphs (A) to (D), inclusive, shall be subject to regulations prescribed by the Secretary." Note 3, *supra*. The relevant regulations are set forth below.[13] We agree with taxpayer that this sentence may be [fol. 75] taken as giving the Secretary the authority to accept classifications outside of the express provisions of subparagraphs (A) - (D). But the language is permissive, and we have found nothing in the historical background indicating that the Secretary's role in agreeing to additional classifications was to be one of obligation rather than of discretion. We therefore reject any contention that the Secretary, or Commissioner, was required to grant relief on the basis of a classification suggested by a taxpayer

[13] Treas. Regs. 130, §40.456-2(b) (1951), as amended, T.D. 6026, 1953—2 Cum. Bull. 235: "Other income, not within a class described in subparagraphs (A) - (D) of section 456(a)(2), to which section 456 is applicable may be grouped by the taxpayer, subject to approval by the Commissioner on the examination of the taxpayer's return, in such classes similar to those specified in subparagraphs (A) - (D) of section 456(a)(2) as are reasonable in a business of the type which the taxpayer conducts, and as are appropriate in the light of the taxpayer's business experience and accounting practice. Income from the sale of tangible property arising out of research and development which extended over a period of more than 12 months is not included in the list of abnormal types of income to which section 456 is applicable, and such income may not constitute a class of income for purposes of that section. However, section 456 is applicable to such income if the income is otherwise properly includible within a class of income to which such section is applicable, for example, the class described in section 456(a)(2)(D)."

merely because the taxpayer has income which meets the other tests of abnormality. Nor do the regulations themselves assist the taxpayer. First, any classification by a taxpayer is "subject to approval by the Commissioner," and such approval was not given here. Secondly, under this regulation the classification must be "similar to those specified in subparagraphs (A) - (D) . . . ." If "discovery" relates to mining and natural resources, taxpayer's classification is not "similar." It may be similar (if in fact it is not completely described by the phrase) to "research or development," but the regulations, in accord with the legislative history already discussed, specifically state that income of this class is not subject to relief. The last sentence of the regulations, on which taxpayer places great emphasis, furnishes it no support. That sentence merely provides that income otherwise properly includible within a class is not to be excluded merely because it happens to constitute income from research and development. However, we are unable to find, either in the statute or in the [fol. 76] regulations, any class in which to place taxpayer's income other than a classification which is specifically excluded.

One matter remains. Taxpayer, prior to the instant case, pursued a claim for relief under §722 of the WW II Act for overassessments of excess profits taxes for the years 1942 and 1943. In 1951 it was successful. In connection with the settlement it was credited with interest. The government agrees that this interest was abnormal income in 1951. Section 456(a)(2)(A). However, under the WW II Act, the reduction of taxpayer's excess profits income correspondingly increased its normal-tax income, resulting in a deficiency for those years, and an interest charge thereon. The Commissioner held, and was sustained by the Tax Court, that in computing 1951 net abnormal income this interest charge should be subtracted from the abnormal income (i.e., the interest credit) as one of the "costs or deductions relating to such abnormal income, allowable in determining the normal-tax net income for the taxable year . . . ."[14]

[14] "(3) Net abnormal income. The term 'net abnormal income' means the amount of the abnormal income less, under regulations

It is true that the interest charge was a result of, and therefore attributable to, the overassessment to which the interest credit was also attributable. Therefore, in a broad sense, they were "related." It is also true that this charge would, in the general compass of the word, constitute a "deduction" "allowable in determining the normal-tax net income." Int. Rev. Code of 1939, §23(b). There is one little cloud. What is the word "costs" doing there? Hav-[fol. 77] ing in mind the broad meaning that might be given to "deductions" standing alone (as, indeed, including costs), does the presence of the word "costs" suggest that "deductions relating" was intended to mean something relating in the same manner as costs? In H.R. Rep. No. 3142, 81st Cong., 2d Sess. 63 (1951—1 Cum. Bull. 187, 231), it is stated that the clause here in question was intended principally as a "clarification of the technical provisions" of §721 (a)(3) of the WW II Act. Examination of this earlier statute[15] discloses that whatever clarity it may have lacked in other respects, it was entirely clear with regard to the present question. There the phrase corresponding to "deductions relating" ("to such abnormal income") was "expenses, . . . through the expenditure of which" ("such abnormal income was in whole or in part derived"). This was a limited, causative relationship, entirely compatible with the word "costs," and falling far short of the meaning contended for here by the government. It is true that we are to apply §456(a)(3) and not §721(a)(3). On the other hand, by reading §456(a)(3) in the manner contended by

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prescribed by the Secretary, (A) 115 per centum of the average amount of the gross income of the same class determined under paragraph (1), and (B) an amount which bears the same ratio to the amount of any costs or deductions relating to such abnormal income, allowable in determining the normal-tax net income for the taxable year, as the excess of the amount of such abnormal income over 115 per centum of such average amount bears to the amount of such abnormal income." Section 456(a)(3).

[15] The corresponding portion of §721(a)(3) reads as follows: ". . . direct costs or expenses, deductible in determining the normal-tax net income of the taxable year, through the expenditure of which such abnormal income was in whole or in part derived . . ."

the government we find an awkwardness in, and apparent absence of purpose for, the presence of the word "costs," while we find none if this statute is construed to read like its predecessor. In view of the legislative history, we will adopt that construction.[16]

It may be that from an "equitable" standpoint it would be appropriate for taxpayer's interest out to be offset against its interest in. But as the government was quick to assert when the shoe was on the other foot, we are [fol. 78] applying tax statutes, not principles of equity. See *Babcock & Wilcox Co.* v. *Pedrick*, 2 Cir., 1954, 212 F.2d 645, *cert. den.*, 1955, 348 U.S. 936. This ruling of the Tax Court must be set aside.

Judgment will enter vacating the decision of the Tax Court, and remanding the case for further proceedings in accordance with this opinion.

IN THE UNITED STATES COURT OF APPEALS
JUDGMENT—May 3, 1960

This cause came on to be heard on the record on review from The Tax Court of the United States, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The decision of the Tax Court is vacated, and the case is remanded to that Court for further proceedings in accordance with the opinion passed down this day.

By the Court:

ROGER A. STINCHFIELD
Clerk.

Approved:

PETER WOODBURY, Ch. J.

[fol. 79] Clerk's Certificate to foregoing Transcript (omitted in printing).

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[16] For what it may be worth, we note that the example given by the Regulations (Treas. Regs. 130, §40.456-1(e) (1951)) with respect to this clause hypothesizes "deductible expenses," not just "deductions."

[fol. 80]

SUPREME COURT OF THE UNITED STATES

No. 169—October Term, 1960

POLAROID CORPORATION, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE

ORDER ALLOWING CERTIORARI—October 10, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted. The case is transferred to the summary calendar and set for argument immediately following No. 151.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.